

1 UNITED STATES COURT OF APPEALS  
2 FOR THE SECOND CIRCUIT  
3

4 SUMMARY ORDER  
5

6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL  
7 REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO  
8 THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION  
9 OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS  
10 CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF  
11 COLLATERAL ESTOPPEL OR RES JUDICATA.  
12

13 At a stated term of the United States Court of Appeals  
14 for the Second Circuit, held at the Thurgood Marshall United  
15 States Courthouse, at Foley Square, in the City of New York,  
16 on the 13<sup>th</sup> day of September, two thousand and four.  
17

18  
19 PRESENT: HON. DENNIS JACOBS,  
20 HON. SONIA SOTOMAYOR,  
21 HON. PETER W. HALL,  
22 Circuit Judges.  
23

24 - - - - -X  
25 JOEL MURRAY,

26  
27 Plaintiff-Appellant,  
28

29 -v.-

02-0194, 02-0197

30  
31 NEW YORK CITY & L. SASSOK, New  
32 York City Police Commissioner,  
33

34 Defendants-Appellees.  
35

36 - - - - -X  
37

38  
39 ON SUBMISSION FOR

40 PLAINTIFF-APPELLANT: JOEL MURRAY, Pro Se,  
41 Malone, NY.  
42

43 ON SUBMISSION FOR

1 **DEFENDANT-APPELLEE:** MICHAEL A. CARDOZO, Corporation  
2 Counsel of the City of New York,  
3 New York, NY.  
4

5 Appeal from the United States District Court for the  
6 Southern District of New York (Mukasey, C.J.).  
7

8 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**  
9 **AND DECREED** that the judgment of the district court be  
10 **VACATED** and **REMANDED** for further proceedings.  
11

12 Plaintiff-Appellant Joel Murray, a state prisoner,  
13 appeals pro se, in forma pauperis, from dismissal of his  
14 claims in the United States District Court for the Southern  
15 District of New York (Mukasey, C.J.).  
16

17 The district court dismissed sua sponte Murray's claims  
18 under 42 U.S.C. § 1983 as failing to state claims on which  
19 relief can be granted. On appeal, Murray does not challenge  
20 dismissal of his claims under 42 U.S.C. § 1983 for false  
21 arrest, false imprisonment, and malicious prosecution, which  
22 he concedes were "properly dismissed" under Heck v.  
23 Humphrey, 512 U.S. 477, 489 (1994) (holding that a plaintiff  
24 requesting relief under § 1983 had no cause of action  
25 "unless and until the conviction or sentence is reversed,  
26 expunged, invalidated, or impugned by the grant of a writ of  
27 habeas corpus"). Murray's chief argument on appeal is that  
28 the district court's dismissal order failed to address his  
29 claim that Defendant L. Sassok, a New York City police  
30 officer, used excessive force when she arrested Murray  
31 during a so-called buy and bust operation.  
32

33 The facts alleged in Murray's complaint do not appear  
34 to rise to a claim of excessive force against Officer  
35 Sassok; however, it is possible, if unlikely, that Murray  
36 could amend his claim to assert a colorable claim of  
37 excessive force. See Gomez v. USAA Fed. Sav. Bank, 171 F.3d  
38 794, 795 (2d Cir. 1999) (per curiam) ("A pro se complaint  
39 is to be read liberally. Certainly the court should not  
40 dismiss without granting leave to amend at least once when a  
41 liberal reading of the complaint gives any indication that a  
42 valid claim might be stated.") (internal quotation marks and  
43 citations omitted). We therefore vacate and remand for

1 further proceedings to give Murray the opportunity to amend  
2 this portion of his complaint.

3  
4 We have examined the other claims raised by Murray on  
5 appeal and find them to be without merit.

6  
7 For the reasons set forth above, the judgment of the  
8 district court is hereby **VACATED** and the matter is **REMANDED**  
9 for further proceedings in accordance with this order.

10  
11 FOR THE COURT:

12 ROSEANN B. MACKECHNIE, CLERK

13 By:

14  
15 \_\_\_\_\_  
16 Richard Alcantara, Deputy Clerk  
17